UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 31 2019

MEMORANDUM

SUBJECT: Memorandum of Agreement

FROM: Dore LaPosta, Director
DECA

Eric Schaaf, Regional Counsel

TO: Peter D. Lopez, Regional Administrator
EPA-Region 2

Attached for your signature is the Memorandum of Agreement (MOA) between EPA and the NJDEP for the Underground Storage Tank (UST) and Leaking Underground Storage Tank (LUST) programs. A previous MOA dated January 24, 2001, was effective for these programs. The revised MOA takes into account the regulatory and programmatic enhancements realized during the 17 years since the 2001 MOA was signed, in addition to the NJDEP's and EPA's experience in managing USTs and LUSTs over that time.

New Jersey has not applied for "State Program Approval" (SPA) for the Underground Storage Tanks program. As such, both New Jersey's UST regulations which appear to be consistent with EPA's regulations, and the federal UST regulations are independently enforceable in the State. NJDEP is expected to submit its SPA package in 2020 for EPA's review and action. However, as result of an EPA Inspector General's February 15, 2012 report regarding the effectiveness of EPA's UST inspection programs, EPA agreed to update UST MOAs with all states (including states have not yet received SPA) by October 13, 2018. Due to end of fiscal year workload and competing priorities, finalization of this MOA has slipped past this date.

Region 2 UST/LUST managers and ORC negotiated the revised MOA with UST/LUST management at NJDEP. The NJDEP Commissioner, Catherine McCabe, has signed the agreement. With your signature the revised MOA becomes effective.

Please contact either of us if you have any questions or comments regarding the MOA.

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2
and the
NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required EPA to develop a comprehensive regulatory program for Underground Storage Tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection and maintain financial responsibility for petroleum USTs to ensure that the owner or operator is financially able to pay for any releases that occur. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published Revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal UST regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the U.S. Environmental Protection Agency Region 2 (EPA) and the New Jersey Department of Environmental Protection (State or NJDEP), establishes the respective roles and responsibilities of each agency with regard to the implementation of the federal UST Program and the Leaking Underground Storage Tank (LUST) Program. This Agreement becomes effective upon the signatures of the parties hereto and remains in effect unless modified by the mutual consent

of both parties, a party withdraws from the Agreement, and/or until EPA approves the state program under Section 9004 of SWDA, 42 USC § 6991c. NJDEP currently plans on seeking state program approval under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the NJDEP and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as surrendering existing statutory or regulatory authority of the EPA or the NJDEP. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR Parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against NJDEP, EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of NJDEP and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency until the state has obtained program approval or the state is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that the state and EPA will carry out to implement the federal UST regulations.

EPA program funding may assist the state in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 USC 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections direct EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial responsibility and to address other aspects of the UST and LUST programs. Section 9003 also provides a procedure by which the state may carry out correction action and enforcement activities for states that enter into a cooperative agreement with the Agency. Under Section 9004, the state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive RCRA Subtitle I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal program. EPA will also provide general technical guidance to the State. EPA will share with the State any national reports developed by EPA. EPA will make available to the State other relevant information as requested that the State needs to implement the federal program. EPA agrees normally to provide the State with copies of reports resulting from any compliance inspection and subsequent enforcement actions.

2. The State agrees to inform the Region of any proposed or adopted state program changes (preferably well in advance) that would affect the State's ability to help implement parts of the federal program. State program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The State will provide compliance monitoring and enforcement information to the Regional Administrator or designee. The State agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions.

3. National Data. EPA maintains certain national data on USTs. These data are used to report to the President, the Congress, and the public on the achievements of the UST program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the State. The State agrees to provide the Regional Administrator or delegate with this information if readily available and as resources allow. If the State is unable to provide the underground storage tank information or if it is necessary to supplement the State information, EPA will engage in an alternate means of information collection after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

4. Confidentiality. The State will make available to EPA upon request any information obtained or used in the State's administration of the federal UST and LUST programs without restriction. If the UST owner/operator has submitted the information to the State under a claim of business confidentiality, the State will

clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will not disclose, copy, reproduce or otherwise make available to anyone any information obtained from the State that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by the State or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by the State will be determined by State priorities and resources, and the status of the State's program development. The specifics of these activities are detailed in the State's LUST-Prevention and LUST-Corrective Action cooperative agreements. The State and EPA agree to assume responsibility for the following activities as specified below.

A. State-lead implementation activities

Assumption by the State of these activities in no way implies that the State program meets the no less stringent or adequate enforcement requirements of the State program approval process. This determination will be made by EPA in response to the State's application for program approval, should the State submit one.

1. 40 CFR part 280

The State will assume, unless otherwise specified, all responsibilities of the implementing agency as written in 40 CFR part 280.

2. Energy Policy Act of 2005

The NJDEP will:

a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the State's UST regulations during on-site inspections and review of documents.

b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.

c. Enforce violations of the State's promulgated UST Regulations. The State shall refer all identified violations of federal UST regulations for which it does not have enforcement authority to the Region which shall appropriately follow up, at its discretion.

d. Meet the requirements as laid out in EPA grant guidelines on the Energy Policy Act of 2005 such as guidelines on secondary containment, operator training, public records and

delivery prohibition. (http://www2.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant)

e. The State will strive to ensure that:

(1) All releases from UST systems are promptly reported and assessed and further releases are stopped;

(2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);

(3) All releases from UST systems are investigated to determine if there are impacts on soil, groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists;

(4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment; and

(5) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.

f. In accordance with §280.67, the State must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. Establish policy for handling variances.

2. Enforcement

EPA reserves the right to act independently in any SWDA Subtitle I implementation and enforcement activity in the State. EPA will investigate and undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

Prior to conducting UST compliance inspections or initiating enforcement actions within the State, EPA will generally notify the NJDEP at least 7 days prior, verbally or in writing, for the purpose of coordinating federal and State actions, except that EPA will not generally provide notice to the State prior to issuing field citations. The NJDEP reserves the right to act independently under State authority. EPA and the NJDEP will communicate and coordinate closely on enforcement, so that each agency will be aware of the other's enforcement activities.

III. EPA OVERSIGHT

EPA oversight of the NJDEP's UST and LUST programs shall consist of the following elements:

A. Review of cooperative agreement applications and cooperative agreement applications and workplans contained therein.

B. Review of semi-annual reports of the State's UST and LUST programs to be submitted to EPA by the NJDEP.

C. Review and evaluation of the State's UST enforcement and LUST remedial action policies.

D. Review of other submittals required by UST or LUST Trust cooperative agreement workplans.

E. At least one annual on-site meeting to discuss performance under the open cooperative agreements and this MOA.

IV. SIGNATURES

This MOA becomes effective upon execution of the signatures below.

3/15/19

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

Date

3/5/19

Catherine R. McCabe
Commissioner
New Jersey Department of Environmental Protection

Date

Mark Gordon, Governor

Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

DEQ

Todd Parfitt, Director

MEMORANDUM

To: Joint Minerals, Business and Economic Development Committee
From: Todd Parfitt, Director, Department of Environmental Quality
Date: October 30, 2019
Subject: Environmental Audit Report FY18-19

Environmental audits conducted under W.S. § 35-11-1105 and 1106

Land Quality Division – LQD had one company commence and complete a self-audit during this reporting period. The audit has been closed with all conditions being met.

Water Quality Division – During the reporting period, the WQD had three companies commence and complete environmental audits. Each audit involved Wyoming Pollution Discharge Elimination System (WYPDES) permitted facilities.

Air Quality Division – In 2018, 14 companies conducted audits, involving 791 facilities. One audit was not accepted as it fell out of the guidelines of the statute. In 2019, nine companies conducted audits of 369 facilities. Final values are still being calculated but at the time of this report, the combined average reduction in NOx and VOC emissions per company was 77 tons per years. The average cost to complete an audit was $290,000.

Most environmental audit submissions are a result of new facility purchases or company restructures. Additionally, one company has requested consideration for the Chapter 8 Small Business Voluntary Disclosure Exemption.

Memorandum of Agreement with U.S. Environmental Protection Agency – In October 2018, the U.S. EPA formally recognized Wyoming's Environmental Audit Program and signed a Memorandum of Agreement confirming that Wyoming is the lead agency for state audits.

Attachments

- Memorandum of Agreement with U.S. Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 2018

Todd Parfitt
Director
Wyoming Department of Environmental Quality
200 West 17th Street
Cheyenne, Wyoming 82002

Dear Director Parfitt:

Please find attached the "Memorandum of Agreement Between the State of Wyoming and The United States Environmental Protection Agency Regarding Self-Audits Conducted Pursuant to State Law" that is ready to be executed. The Memorandum of Agreement (MOA) establishes procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (Self-Audit Law) and reflects our agreement to encourage greater compliance with laws and rules protecting public health and the environment by promoting greater self-policing in the regulated community.

The EPA values its partnership with Wyoming on environmental issues and is committed to providing Wyoming with the support and flexibility needed to effectively implement its Self-Audit Law.

We are grateful for the hard work and cooperation of Wyoming Department of Environmental Quality (WDEQ) officials and the EPA that led to the development of this MOA, and we look forward to working with WDEQ on implementing this MOA and in other efforts to ensure the health and safety of the people and environment of Wyoming. Please contact us if you have any questions, concerns, or ideas for further cooperation.

Sincerely,

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

Doug Benevento
Regional Administrator
EPA Region VIII

Attachment

MEMORANDUM OF AGREEMENT

between

the State of Wyoming and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

I. PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the State of Wyoming and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the Wyoming Attorney General's letter opinion of July 10, 1997, for implementation of the self-audit law.

II. BACKGROUND: WYOMING STATE AUDIT PROGRAM

Wyoming's audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. Wyo. Stat. Ann. §§ 35-11-1105 and 35-11-1106 (2017). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the Wyoming Attorney General's letter opinion of July 10, 1997, regarding Wyoming's audit law, WDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that "WDEQ retains all the authority it had prior to the passage of the audit privilege and immunity law to recover civil penalties for violations that result in significant economic benefit or that result in serious harm or present an imminent and substantial endangerment to public health or the environment under federally-delegated programs."

Wyoming's self-audit law meets minimum requirements for Federal delegation.

III. APPLICABILITY

Except for the Wyoming Attorney General's letter opinion of July 10, 1997, this document supersedes any prior agreements between EPA and Wyoming regarding implementation of the Wyoming self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil

violations of Federal environmental statutes that Wyoming is authorized to administer where such violations are addressed under Wyoming's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. AGREEMENT

In no case shall EPA selectively target or investigate Wyoming entities solely on the basis that they have sought penalty immunity under Wyoming's self-audit Law.

In any case in which an entity conducts an audit under the Wyoming Audit Law EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of WDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of Wyoming facilities with federal laws that Wyoming is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in Wyoming's self-audit program, Wyoming shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in Wyoming's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in Wyoming's self-audit program has violations of federal environmental statutes that Wyoming is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under Wyoming Statute § 35-11-1106 (2017), EPA may take an enforcement action after closely communicating with upper level management of WDEQ. In a circumstance where upper management in the Region and Wyoming do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

In general, EPA defers to state penalty mitigation for self-disclosures as long as state policy meets minimum requirements for Federal delegation. *See* 65 Fed. Reg. 19,624. In general, Wyoming's self-audit law waives penalties for violations that are self-disclosed. However, as stated in Wyoming Statute § 35-11-1106 (2017) and in the Wyoming Attorney General's letter opinion of July 10, 1997, Wyoming retains penalty authority for specific circumstances. EPA will defer to Wyoming's judgment on the assessment of penalties under its self-audit law except as described in this paragraph. EPA may consider asking Wyoming to seek penalties under its retained authorities where Wyoming's pattern and practice of penalty mitigation results in implementation of a federally delegated program that is less stringent than the federal program (see Wyo. Stat. Ann. § 35-11-1106(a)(iv)). If Wyoming rejects such a request, EPA retains authority to take direct action under its own authorities. However, prior to taking such an action, EPA will communicate closely with upper management of WDEQ and, if needed, will elevate any disagreements first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator.

Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by Wyoming or to address an imminent and substantial endangerment.

Wyoming will develop a methodology to measure any increased participation in and compliance benefits from Wyoming's self-audit program.

V. AGREEMENT MODIFICATION

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the Wyoming self-audit law is amended EPA and Wyoming will confer and make any revisions necessary to this MOA.

VI. GENERAL PROVISIONS

This Agreement does not create any substantive or procedural right, duty, obligation or benefit, implied or otherwise, enforceable by law or in equity, by persons who are not party to this agreement, against Wyoming or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the State of Wyoming and EPA.

VII. TERMINATION

This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by Wyoming prior to the termination date.

VIII. SIGNATORIES

10.26.18

Douglas H. Benevento Date
Regional Administrator
U.S. Environmental Protection Agency
Region 8

10/26/18

Todd Parfitt Date
Director
Wyoming Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 0 5 2019

Dave Glatt
Director
North Dakota Department of Environmental Quality
918 East Divide Avenue, 4th Floor
Bismarck, North Dakota 58501

Dear Director Glatt:

Please find attached the "Memorandum of Agreement Between the State of North Dakota and the U.S. Environmental Protection Agency regarding Self-Audits Conducted Pursuant to State Law" that is ready to be executed. The Memorandum of Agreement (MOA) establishes procedures and policies for administration of the North Dakota Environmental Audits Law (Self-Audit Law) and reflects our agreement to encourage greater compliance with laws and rules protecting public health and the environment by promoting greater self-policing in the regulated community.

The EPA values its partnership with North Dakota on environmental issues and is committed to providing North Dakota with the support and flexibility needed to effectively implement its Self-Audit Law.

We are grateful for the hard work and cooperation of North Dakota Department of Environmental Quality (NDDEQ) officials and the EPA that led to the development of this MOA, and we look forward to working with NDDEQ on implementing this MOA and in other efforts to ensure the health and safety of the people and environment of North Dakota. Please contact us if you have any questions, concerns, or ideas for further cooperation.

Sincerely,

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

Gregory Sopkin
Regional Administrator
EPA Region VIII

Enclosure

MEMORANDUM OF AGREEMENT

between

the State of North Dakota and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

I. PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the State of North Dakota, through its Department of Environmental Quality (NDDEQ), and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the North Dakota Environmental Audits Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the North Dakota Attorney General's letter opinion of February 5, 2019, for implementation of the self-audit law.

II. BACKGROUND: NORTH DAKOTA STATE AUDIT PROGRAM

North Dakota's self-audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. N.D. Cent. Code § 32-40.2-01 (2019). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the North Dakota Attorney General's letter opinion of February 5, 2019, regarding North Dakota's self-audit law, the NDDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that North Dakota's self-audit law does not restrict North Dakota's ability to obtain injunctive relief, civil penalties for significant economic benefit, or criminal penalties. Further, the self-audit law does not apply where there is imminent and substantial harm to human health or the environment, nor does it grant privilege or immunity to "violations required to be reported by federally delegated programs."

North Dakota's self-audit law meets minimum requirements for Federal delegation.

III. APPLICABILITY

Except for the North Dakota Attorney General's letter opinion of February 5, 2019, this document supersedes any prior agreements between EPA and North Dakota regarding implementation of the North Dakota self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil

violations of Federal environmental statutes that North Dakota is authorized to administer where such violations are addressed under North Dakota's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. AGREEMENT

In no case shall EPA selectively target or investigate North Dakota entities solely on the basis that they have sought penalty immunity under North Dakota's self-audit law.

In any case in which an entity conducts an audit under North Dakota's self-audit law, EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of NDDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of North Dakota facilities with federal laws that North Dakota is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in North Dakota's self-audit program, North Dakota shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in North Dakota's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in North Dakota's self-audit program has violations of federal environmental statutes that North Dakota is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under North Dakota Century Code § 32-40.2-01 (2019), EPA may take an enforcement action after closely communicating with upper level management of NDDEQ. In a circumstance where upper management in the Region and North Dakota do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

In general, EPA defers to state penalty mitigation for self-disclosures as long as state policy meets minimum requirements for Federal delegation. *See* 65 Fed. Reg. 19,624. In general, North Dakota's self-audit law waives civil penalties for violations that are self-disclosed. However, as stated in North Dakota Century Code § 32-40.2-01 (2019) and in the North Dakota Attorney General's letter opinion of February 5, 2019, North Dakota retains penalty authority for specific circumstances. EPA will defer to North Dakota's judgment on the assessment of penalties under its self-audit law except as described in this paragraph. EPA may consider asking North Dakota to seek penalties under its retained authorities where North Dakota's pattern and practice of penalty mitigation results in implementation of a federally delegated program that is less stringent than the federal program (*see* N.D. Cent. Code § 32-40.2-01(2)(g)). If North Dakota rejects such a request, EPA retains authority to take direct action under its own authorities. However, prior to taking such an action, EPA will communicate closely with upper management of NDDEQ and, if needed, will elevate any disagreements first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator.

Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by North Dakota or to address an imminent and substantial endangerment.

North Dakota will develop a methodology to measure any increased participation in and compliance benefits from North Dakota's self-audit program.

V. AGREEMENT MODIFICATION

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the North Dakota self-audit law is amended EPA and North Dakota will confer and make any revisions necessary to this MOA.

VI. GENERAL PROVISIONS

This Agreement does not, create any substantive or procedural right, duty, obligation or benefit, implied or otherwise, enforceable by law or in equity, by persons who are not party to this agreement, against North Dakota or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the State of North Dakota and EPA.

VII. TERMINATION

This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by North Dakota prior to the termination date.

VIII. SIGNATORIES

10/7/19

Gregory Sopkin Date
Regional Administrator
U.S. Environmental Protection Agency
Region 8

10/7/19

Dave Glatt Date
Director
North Dakota Department of Environmental Quality

MEMORANDUM OF AGREEMENT

between

the State of North Dakota and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

I. PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the State of North Dakota, through its Department of Environmental Quality (NDDEQ), and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the North Dakota Environmental Audits Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the North Dakota Attorney General's letter opinion of February 5, 2019, for implementation of the self-audit law.

II. BACKGROUND: NORTH DAKOTA STATE AUDIT PROGRAM

North Dakota's self-audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. N.D. Cent. Code § 32-40.2-01 (2019). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the North Dakota Attorney General's letter opinion of February 5, 2019, regarding North Dakota's self-audit law, the NDDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that North Dakota's self-audit law does not restrict North Dakota's ability to obtain injunctive relief, civil penalties for significant economic benefit, or criminal penalties. Further, the self-audit law does not apply where there is imminent and substantial harm to human health or the environment, nor does it grant privilege or immunity to "violations required to be reported by federally delegated programs."

North Dakota's self-audit law meets minimum requirements for Federal delegation.

III. APPLICABILITY

Except for the North Dakota Attorney General's letter opinion of February 5, 2019, this document supersedes any prior agreements between EPA and North Dakota regarding implementation of the North Dakota self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil

violations of Federal environmental statutes that North Dakota is authorized to administer where such violations are addressed under North Dakota's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. AGREEMENT

In no case shall EPA selectively target or investigate North Dakota entities solely on the basis that they have sought penalty immunity under North Dakota's self-audit law.

In any case in which an entity conducts an audit under North Dakota's self-audit law, EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of NDDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of North Dakota facilities with federal laws that North Dakota is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in North Dakota's self-audit program, North Dakota shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in North Dakota's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in North Dakota's self-audit program has violations of federal environmental statutes that North Dakota is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under North Dakota Century Code § 32-40.2-01 (2019), EPA may take an enforcement action after closely communicating with upper level management of NDDEQ. In a circumstance where upper management in the Region and North Dakota do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

In general, EPA defers to state penalty mitigation for self-disclosures as long as state policy meets minimum requirements for Federal delegation. *See* 65 Fed. Reg. 19,624. In general, North Dakota's self-audit law waives civil penalties for violations that are self-disclosed. However, as stated in North Dakota Century Code § 32-40.2-01 (2019) and in the North Dakota Attorney General's letter opinion of February 5, 2019, North Dakota retains penalty authority for specific circumstances. EPA will defer to North Dakota's judgment on the assessment of penalties under its self-audit law except as described in this paragraph. EPA may consider asking North Dakota to seek penalties under its retained authorities where North Dakota's pattern and practice of penalty mitigation results in implementation of a federally delegated program that is less stringent than the federal program (*see* N.D. Cent. Code § 32-40.2-01(2)(g)). If North Dakota rejects such a request, EPA retains authority to take direct action under its own authorities. However, prior to taking such an action, EPA will communicate closely with upper management of NDDEQ and, if needed, will elevate any disagreements first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator.

Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by North Dakota or to address an imminent and substantial endangerment.

North Dakota will develop a methodology to measure any increased participation in and compliance benefits from North Dakota's self-audit program.

V. AGREEMENT MODIFICATION

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the North Dakota self-audit law is amended EPA and North Dakota will confer and make any revisions necessary to this MOA.

VI. GENERAL PROVISIONS

This Agreement does not, create any substantive or procedural right, duty, obligation or benefit, implied or otherwise, enforceable by law or in equity, by persons who are not party to this agreement, against North Dakota or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the State of North Dakota and EPA.

VII. TERMINATION

This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by North Dakota prior to the termination date.

VIII. SIGNATORIES

10/7/19

Gregory Sopkin
Regional Administrator
U.S. Environmental Protection Agency
Region 8

Date

10/7/19

Dave Glatt
Director
North Dakota Department of Environmental Quality

Date

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 2
and the
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required the U.S. Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for underground storage tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. The regulations in 40 CFR Part 280 also included provisions for responding to suspected and confirmed releases from leaking underground storage tanks (LUSTs) which required investigations and cleanups. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the EPA and the New York State Department of Environmental Conservation (State or NYSDEC), establishes the respective roles and responsibilities of each agency with regard to the implementation of the federal UST program and the LUST program. This Agreement becomes effective upon the

signatures of the parties hereto and remains in effect unless modified by the mutual consent of both parties, a party withdraws from the Agreement, and/or until EPA approves the State program under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the NYSDEC and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as altering existing statutory or regulatory authority of the EPA or the NYSDEC. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against NYSDEC, EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of NYSDEC and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency in a state until the state has obtained program approval or is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that the State and EPA will carry out to implement the federal UST regulations and the LUST program.

EPA program funding may assist the State in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections implement the UST/LUST programs, including directing EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial responsibility. Section 9003 also provides a procedure by which states may carry out corrective action and enforcement activities for states that enter into a cooperative agreement with the Agency. Under Section 9004, a state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive SWDA Subtitle I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal UST or LUST programs. EPA will also provide general technical guidance to the State. EPA will share with the State any national UST or LUST program reports developed by or for EPA. EPA will make available to the State other relevant information, as requested, that the State needs to implement the federal program.

2. The State agrees to inform (in advance wherever possible) EPA of any proposed or adopted State program changes that would affect the State's ability to help implement parts of the federal UST or LUST programs. State program changes of concern include modification of the State's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understandings with other agencies, modifications of authorizations of local (county) programs, and modifications of resource levels (for example, available or budgeted personnel and funds). The State will provide, upon request, compliance monitoring and enforcement information to the Regional Administrator or designee. The State agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions. Information will be handled in accordance with the Confidentiality provisions noted in (4) below, as applicable.

3. National Data. EPA maintains certain national data on underground storage tanks. These data are used to report to the President, the Congress, and the public on the achievements of the UST program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information that involves the UST or LUST programs in New York State, EPA will generally first seek to obtain this information from the State (unless EPA uses its statutory information request authorities). The State agrees to provide the Regional Administrator or designee with this information if readily available and as resources allow. If the State is unable to provide the underground storage tank information or if it is necessary to supplement the State information, EPA will engage in an alternate means of information collection after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

4. Confidentiality. The State will make available to EPA upon request any information obtained or used in the State's administration of parts of the federal UST and LUST programs unless restricted as noted below. If the UST owner/operator has submitted the information to the State under a claim of business confidentiality, the State will clearly identify that claim of confidentiality restriction to EPA in writing when providing the information. EPA will not disclose, or otherwise make available to the public any information obtained from the State that is subject to a claim of confidentiality without the State's or the UST owner's/operator's consent unless otherwise required or allowed by law. NYSDEC has informed EPA that certain information has been restricted at the state level in an agreement between NYSDEC and the New York State Division of Homeland Security and Emergency Services and that the State may not be able to share this restricted information with EPA unless arrangements can be made to limit the public availability of this information.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by the State or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by the State will be determined by State priorities and resources, and the status of the State's program development. The specifics of these activities are detailed in the State's LUST-Prevention and LUST-Corrective Action cooperative agreements. The State and EPA agree to assume responsibility for the following activities as specified below.

A. State-lead implementation activities

Assumption by the State of these activities in no way implies that the State program meets the no less stringent or adequate enforcement requirements of the State program approval process. This determination will be made by EPA in response to the State's application for program approval, should the State submit one.

1. 40 CFR part 280

The State will assume, unless otherwise specified in this MOA or as agreed upon in the future, all responsibilities of the implementing agency as written in 40 CFR part 280.

2. Energy Policy Act of 2005

The NYSDEC will:

a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the State's UST regulations during on-site inspections and review of documents.

b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.

c. Bring appropriate enforcement of violations of the State's regulations that mirror federal UST requirements. The State shall refer to EPA all identified violations of federal UST regulations for which it does not have enforcement authority. EPA shall follow up, at its discretion.

d. Meet the requirements as laid out in EPA grant guidelines issued pursuant to the Energy Policy Act of 2005 including guidelines on UST inspections, secondary containment, operator training, public record and delivery prohibition.

e. The State will strive to ensure that:

(1) All releases from UST systems are promptly reported and assessed and identified releases are stopped;

(2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of removal of free product if present);

(3) All releases from UST systems are evaluated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists;

(4) All releases from UST systems are cleaned up through soil and groundwater remediation and other steps are taken, as necessary, to protect human health and the environment; and

(5) Adequate information is made available to the State to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.

f. In accordance with 40 CFR §280.67, the State must notify the affected public of all confirmed releases requiring a corrective action plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. EPA will establish policy for handling any variances allowed in 40 CFR Part 280.

2. Enforcement.

EPA reserves the right to act independently in any SWDA Subtitle I implementation, investigation, and enforcement activity in the State. EPA will undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

Prior to conducting UST compliance inspections or initiating enforcement actions within the State, EPA will generally notify the NYSDEC at least 7 days prior, preferably in writing, for the purpose of coordinating federal and State actions as appropriate, except that EPA will not generally provide notice to the State prior to issuing field citations. The NYSDEC reserves the right to act independently under State authority. EPA and the NYSDEC will communicate and coordinate closely on inspections and enforcement, so that each agency will be aware of the other's activities.

III. EPA OVERSIGHT

EPA oversight of the NYSDEC's UST and LUST programs shall consist of the following elements:

A. Review of cooperative agreement applications and associated work plans.

B. Review of semi-annual reports of the State's UST and LUST programs submitted to EPA by the NYSDEC.

C. Review and evaluation of the State's UST enforcement and LUST remedial action policies.

D. Review of other submittals required by UST or LUST cooperative agreement work plans.

E. At least one annual in-person meeting to discuss performance under the open cooperative agreements and this MOA.

IV. SIGNATURES

This MOA becomes effective upon execution of the signatures below.

6/3/19

Basil Seggos
Commissioner
New York State Department of Environmental Conservation

Date

6/10/19

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

Date

JUN 7 - 2019

MEMORANDUM OF AGREEMENT
BETWEEN
THE PUERTO RICO ENVIRONMENTAL QUALITY BOARD
and
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
UNDERGROUND STORAGE TANKS PROGRAM
and
LEAKING UNDERGROUND STORAGE TANKS PROGRAM

I. BACKGROUND

In 1984, Congress modified the Resource Conservation and Recovery Act, which was an amendment to the Solid Waste Disposal Act (SWDA), to require EPA to develop a comprehensive regulatory program for underground storage tank ("UST") systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. Among other obligations, owners and operators were required to monitor their UST systems for releases using release detection, and to maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published Revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing the emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This was the first major revision to the federal UST regulations since 1988.

EPA granted the Commonwealth of Puerto Rico State Program Approval ("SPA") effective March 31, 1998. However statutory changes made by the Energy Policy Act necessitate that all states which want to receive LUST Trust funds update their UST regulations and re-apply for SPA. A revision of the approved state programs is also being required by EPA pursuant to 40 CFR Part 281 so that state programs reflect the revised federal UST regulations.

1. Although technically Puerto Rico is a Commonwealth, the UST and LUST programs in Puerto Rico are administered as though it were a state.

II. AUTHORITIES AND PURPOSE

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR Part 281 for implementation of the Commonwealth of Puerto Rico's revised Underground Storage Tank Program (hereinafter "State Program" or "Commonwealth Program") being approved under Section 9004 of the Solid Waste Disposal Act as amended by various statutes , including most notably the Resource Conservation and Recovery Act (hereinafter such statutory authorities shall collectively be referred to as "RCRA" or "the Act") , 42 U.S.C. §6901 et seq.), This Agreement further sets forth the manner in which Puerto Rico and EPA will coordinate in the Commonwealth's administration of the Commonwealth's Program.

This Agreement is entered into by the Secretary of the Puerto Rico Environmental Quality Board (EQB, aka Junta de Calidad Ambiental (JCA) (hereinafter "the State" or "the Commonwealth)[1] and the Regional Administrator, EPA Region 2 (hereinafter "Regional Administrator" or "EPA"). Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Parts 280 and 281.

The parties expect to review the Agreement jointly from time to time, possibly as often as once a year. This Agreement may be modified upon the initiative of either party in order to ensure consistency with Commonwealth program modifications or for other reasons. Any revisions or modifications must be in writing and must be signed by a senior official for the Commonwealth and by the Regional Administrator or assignee.

This Agreement with any subsequent modifications will remain in effect until such time as State Program Approval is withdrawn by EPA or responsibility for the UST program is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Part 281.60 and 281.61. This Agreement shall apply to any successor agency to the Puerto Rico Environmental Quality Board.

III. POLICY

Each of the parties to this Agreement is responsible for ensuring that its obligations under Subtitle I of RCRA are met. Upon final approval by EPA in 1998, the Commonwealth assumed primary responsibility for implementing the Subtitle I Underground Storage Tank Program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of Subtitle I of RCRA, including direct implementation in the event the Commonwealth is unwilling or unable to act. The Secretary of EQB and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the Commonwealth program. In particular, the Commonwealth and EPA acknowledge that the Energy Policy Act of 2005 added additional requirements for the Commonwealth's receiving funding from EPA.

EPA will review the Commonwealth's program in order to evaluate its implementation by the Commonwealth, to assist the Commonwealth in implementing its program; to allow EPA to report to the President, the Congress, and the public on the achievements of the underground storage tank program; and to encourage the Commonwealth and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with improper management of underground storage tanks. EPA oversight will be accomplished through written reporting requirements, compliance and enforcement overview, annual review of the Commonwealth's program, and compilation and review of other relevant information.

IV. COMMONWEALTH PROGRAM REVIEW

The Regional Administrator or assignee (such term to include EPA employees working on issues related to the UST and LUST programs) will assess the Commonwealth's administration and enforcement of its underground storage tank program on a continuing basis for consistency with Subtitle I requirements, with this Agreement, and with all applicable Federal requirements and policies, and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Commonwealth in accordance with this Agreement and an annual review of Commonwealth program activities. The Regional Administrator or assignees may also consider, as part of this regular assessment, written comments about the Commonwealth's program administration and enforcement that are received from regulated persons, the public, and Federal, Commonwealth, and local agencies. Copies of any such comments received by the Regional Administrator or assignees will normally be forwarded to the Commonwealth upon receipt by the EPA.

To ensure effective Commonwealth program review, the Commonwealth agrees to allow EPA access to all files and other information requested by the Regional Administrator or assignees and deemed necessary for reviewing Commonwealth program administration and enforcement.

Review of Commonwealth files may be scheduled as needed. Commonwealth program review meetings or calls between the Commonwealth and the Regional Administrator or assignees will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings/calls will be scheduled at least 14 days in advance unless agreed to differently. A tentative agenda for the discussion will be prepared by EPA.

IV. INFORMATION SHARING

A. General

As the respective information needs of the Commonwealth and EPA evolve, changes to this section of the Agreement may be appropriate. During reviews of this agreement, the Commonwealth and Regional Administrator or assignees will carefully examine the following information sharing provisions for any necessary revisions.

B. EPA

1. EPA will keep the Commonwealth informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, training opportunities, and any other factors that affect the Commonwealth program. EPA will also provide general technical guidance to the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA from the data submitted through Commonwealth's reporting requirements.

2. EPA will make available to the Commonwealth other relevant information, as requested, that the Commonwealth needs to implement its approved program.

C. Commonwealth

1. The Commonwealth agrees to inform the Region of any proposed or adopted program changes (in advance wherever possible) that would affect the Commonwealth's ability to implement the approved program. Commonwealth program changes of concern include modification of the Commonwealth's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). The Commonwealth recognizes that Commonwealth program revisions must be made in accordance with the provisions of 40 CFR Part 281.

2. The Commonwealth will provide compliance monitoring and enforcement information to the Regional Administrator or assignee. The Commonwealth agrees to provide EPA, at its request, with copies of enforcement documents, reports or data resulting from any compliance inspection and/or subsequent enforcement actions.

D. National Data

EPA maintains certain national data on underground storage tanks. The data are used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to obtain this information from the Commonwealth. The Commonwealth agrees to provide the Regional Administrator or assignee with this information if readily available and as resources allow. If the Commonwealth is unable to provide the underground storage tank information or if it is necessary to supplement the Commonwealth information, EPA may perform information collection including site visits after notifying the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA as a result of such information collection.

E. Confidentiality

The Commonwealth will make available to EPA upon request any information obtained or used in the administration of the Commonwealth program without restriction. If the UST owner/operator has submitted the information to the Commonwealth under a claim of business confidentiality, the Commonwealth will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will handle the information in accordance with 40 CFR Part 22 and will not disclose, copy, reproduce or otherwise make available to anyone any information obtained from the Commonwealth that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law. If information is submitted to EPA under a claim of confidentiality, EPA may share such information with the Commonwealth to the extent allowed under the provisions of 40 CFR Part 2, including 40 C.F.R. § 2.305(h)(3).

V. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this agreement shall restrict EPA's right to inspect or gather information from any federally regulated underground storage tank facility or bring enforcement action against any person believed to be in violation of the approved Commonwealth underground storage tank program. Before conducting an inspection of USTs at a facility, the Regional Administrator or assignee will normally give the Commonwealth at least 7 days' notice of EPA's intent to inspect. The Regional Administrator or assignee and Commonwealth may agree on a longer period of time in order to allow the Commonwealth the opportunity to conduct the inspection. If the Commonwealth performs a compliance inspection and submits a report and relevant data thereto within the time agreed upon by EPA and EQB, no EPA inspection will normally be performed, unless the Regional Administrator or assignee deems the Commonwealth report and data to be inadequate. In case of an imminent hazard to human health or the environment, the Regional Administrator or assignee may shorten or waive the notice period.

The Regional Administrator or assignee may take enforcement action against any person determined to be in violation of Subtitle I of RCRA in accordance with section 9006. EPA also retains its right to issue orders and bring actions under Sections 7003 or 9003(h) of of RCRA and any other applicable Federal statute. With regard to Federal enforcement, it is EPA's policy not to take such action where the Commonwealth has taken timely and appropriate enforcement action. Before issuing a complaint or compliance order under Section 9006, EPA will give notice to the Commonwealth.

B. Commonwealth

The Commonwealth agrees to maintain a staffing level, including adequate technical support and legal personnel, capable of implementing an effective UST program and to conduct program development activities designed to improve the Commonwealth's program for monitoring the compliance by owners and operators of federally regulated UST facilities with applicable Commonwealth program requirements. EQB will maintain a separate account dedicated to

allocate revenues from permits, penalties and other fees for the administration of the UST and LUST Programs. The Commonwealth specifically agrees to assign a complement of attorneys from the EQB to assist in the timely and effective administration of the regulatory enforcement process. As part of the Commonwealth's enforcement program, the Commonwealth will conduct compliance inspections and use other mechanisms to assess compliance with UST regulations, compliance schedules, and all other Commonwealth program requirements. The Commonwealth agrees to develop an appropriate enforcement response against all persons in violation of UST regulations (including notification requirements), compliance schedules, and all other Commonwealth program requirements, including violations detected by Commonwealth compliance inspections and record reviews. The Commonwealth will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public, and the Commonwealth will provide for public participation in its enforcement process through one of the options set out in 40 CFR 281.42. The Commonwealth agrees to retain all UST compliance and enforcement records for at least 3 years unless there is an enforcement action planned or pending. In that case, all records will be retained until two years after such action is resolved.

The EQB (or any successor agency) will:

a. Ensure that UST inspectors are adequately trained so that each is able to identify and document violations of the Commonwealth's UST regulations during on-site inspections and review of documents.

b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.

c. Enforce violations of UST Regulations.

d. Meet applicable requirements as specified in EPA grant guidelines on the Energy Policy Act of 2005 such as those regarding secondary containment, operator training, public record and delivery prohibition. (http://www2.epa.gov/ust/energy-policy-act-2005-and-underground-storage-tanks-usts#grant)

e. The Commonwealth will use its best efforts to ensure that:

(1) All releases from UST systems are promptly assessed and further releases are stopped;

(2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);

(3) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment, including vapor intrusion into structures, exists.

(4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;

(5) Adequate information is made available to the Commonwealth to demonstrate that corrective actions are taken in accordance with the requirements of paragraphs (1) through (4) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.

f. In accordance with §280.67, the Commonwealth must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

VI. BENEFICIARIES OF THIS AGREEMENT/ SIGNATURES

The terms set forth in this Agreement are intended solely for the purpose of memorializing the parties' understanding of their respective roles and commitments in the administration of the Commonwealth of Puerto Rico's Underground Storage Tank Program. They are not intended, and are not to be relied upon, to create any rights, substantive or procedural, enforceable at law or in equity, by any other party against the Commonwealth, EPA, and their officials or employees. The parties reserve the right to modify this agreement in accordance with its terms without public notice. This Agreement does not replace existing laws or regulations and does not apply to any person other than the Commonwealth or EPA and their agents.

This MOA becomes effective upon execution of the signatures below.

MAR 20 2019

Tania Vazquez Rivera, Esq.
Secretary
Puerto Rico Environmental Quality Board

Date

APR - 3 2019

Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency
Region 2

Date

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE
UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY,
REGION 4
AND
THE
STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

I. PURPOSE/OBJECTIVES/GOALS:

The purpose of this Memorandum of Understanding (MOU) is to establish cooperation and coordination between the United States Environmental Protection Agency, Region 4 (the EPA) and the state of Florida Division of Emergency Management (DEM), for identifying and coordinating compliance monitoring, compliance assistance and Supplemental Environmental Project (SEP) participation pursuant to the Emergency Planning and Community Right to Know Act of 1986 ("EPCRA"), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 ("SARA Title III), the EPA Supplemental Environmental Projects Policy Update, effective March 10, 2015, and Florida Executive Orders 94-138 and 05-122.

The DEM enjoys a positive working relationship with the EPA and EPCRA regulated industries within the state of Florida. The DEM has worked extremely hard to foster these partnerships, and the MOU is intended to further strengthen these relationships by maximizing the cooperation and collaboration in the areas of Compliance Monitoring, Compliance Assistance, and SEPs.

II. BACKGROUND:

This MOU sets forth activities to be carried out by the EPA and DEM in furtherance of objectives of this MOU.

WHEREAS, EPCRA requires certain reporting by facility owners/operators to the Florida State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC); and

WHEREAS, the need exists for sharing certain information between the EPA and DEM, and coordination of compliance, and outreach activities.

THEREFORE, it is hereby agreed between the EPA and DEM as follows:

III. ACTIVITIES:

1. ACTIVITIES TO BE CONDUCTED BY EPA REGION 4

A. Maintain the lead on compliance inspections pertaining to EPCRA Sections 312 and 313. The EPA, as a courtesy and to the extent practicable, may notify the DEM in advance of conducting EPCRA inspections. To the extent practicable, and resources permitting, the EPA may prioritize requests from the DEM for conducting EPCRA compliance inspections and compliance assistance.

B. Upon request from the DEM, the EPA may to the extent practicable and as allowed by applicable law and more particularly as discussed in Section 3(B) below, share information concerning alleged EPCRA violations that are uncovered during EPCRA compliance assistance visits at facilities in Florida.

C. In accordance with the EPA's final Enforcement Response Policy and SEP policy, and in appropriate cases as determined by and within its discretion, the EPA may consider the inclusion of SEPs in settlement agreements involving facilities in Florida. The EPA recognizes the benefits SEPs may provide to the state of Florida, as well as to industries, citizens and businesses of the impacted community.

2. ACTIVITIES TO BE CONDUCTED BY THE DEM

A. Assist the EPA with targeting EPCRA regulated facilities that are non-compliers in the state of Florida for compliance monitoring and enforcement, and compliance assistance by the EPA.

B. Accompany the EPA during compliance assistance visits to EPCRA regulated facilities in the state of Florida. Notify the EPA of all non-compliant facilities based on information generated by Florida's annual fee system and from relevant SERC and LEPC records. Make available to the EPA any evidence of CERCLA 103 and EPCRA Section 304, 312, and 313 violations uncovered during normal record-keeping activities.

C. Cooperate, to the extent necessary and permitted by law, in any EPCRA initiatives, specifically those involving EPCRA Sections 302, 303, 304, 311, 312 and 313.

3. MISCELLANEOUS

A. The parties agree that the costs of all services will be borne by the party providing such.

B. Any confidential information the parties may decide to share, shall be provided or disclosed only in accordance with the requirements of the Freedom of Information Act (FOIA), 40 C.F.R. Part 2, and Chapters 119 and 286 of the Florida Statutes. The parties understand and agree that either or both parties may be precluded from sharing certain information due to restrictions or requirements of applicable federal and state laws pertaining to confidentiality of information.

C. This MOU is not a delegation of authority under EPCRA.

D. For the purposes of this MOU, each agency agrees to establish a single point of contact. Each agency shall provide written notice of its established point of contact to the other agency within 20 days after this MOU becomes effective.

E. This MOU may be terminated by either party by providing written notice at least 30 days prior to the termination date, or by mutual written agreement, and is automatically terminated upon the enactment of a law that is in conflict with this agreement.

F. This MOU shall become effective upon the date of last signing by the parties' representatives; and shall expire five years thereafter. The parties agree to meet at least 30 days prior to the expiration date to discuss the MOU and any concerns related to its implementation, and to determine if the MOU should be renewed, amended, or terminated.

G. The contact persons designated by the parties to this MOU agree to communicate informally on a regular basis, but at least once a month, to discuss problems or concerns that may arise during the duration of this MOU. Any modifications to this MOU shall only become valid when reduced to writing, signed by both parties, and attached to this MOU.

H. Nothing in this MOU shall be construed to impose liability on the EPA or the State of Florida. Nothing in this MOU may be interpreted as a waiver of state sovereign immunity. Any provision of this MOU that is inconsistent with the State's sovereign immunity statutes shall be considered null and void.

I. Neither party to this MOU has the authority to act on behalf of the other party. Parties to this MOU have no authority to bind the other party to any obligation, including compliance inspections, compliance assistance, enforcement and SEPs.

J. This MOU is not intended to be enforceable in any court of law or dispute resolution forum. This MOU does not create any rights or benefits, substantive or procedural, enforceable by law or equity, by persons who are not party to this MOU, against the EPA or the DEM, their officers or employees, or any other person.

K. This MOU does not direct or apply to any person outside of the EPA and the DEM. No person or entity not a party to this MOU can rely on this MOU to grant any rights or authority not granted by applicable state or federal law. The sole remedy for non-performance under this MOU shall be termination of the MOU, as expressed above.

AGREED TO:

U.S. Environmental Protection Agency
Region 4:

By: _____ Date: 8/21/2019

Suzanne G. Rubini,
Acting Director
Enforcement and Compliance
Assurance Division

State of Florida Division of
Emergency Management:

By: _____ Date: 7/2/19

Jared E. Moskowitz,
Director
Division of Emergency Management

MEMORANDUM OF AGREEMENT
Between the
U.S. ENVIRONMENTAL PROTECTION AGENCY
and the
VIRGIN ISLANDS DEPARTMENT OF PLANNING AND NATURAL RESOURCES
For the Activities of the
UNDERGROUND STORAGE TANK PROGRAM
and the
LEAKING UNDERGROUND STORAGE TANK PROGRAM

I. GENERAL

A. Background

In 1984, Congress added Subtitle I to the Solid Waste Disposal Act (SWDA), which required the U.S. Environmental Protection Agency (EPA) to develop a comprehensive regulatory program for Underground Storage Tank (UST) systems storing petroleum or certain hazardous substances to protect the environment and human health from UST releases. EPA promulgated the UST regulations in 1988 (40 CFR Part 280). These regulations set minimum standards for new tanks and required owners and operators of existing tanks to upgrade, replace, or close them. In addition, owners and operators were required to monitor their UST systems for releases using release detection, and maintain financial responsibility for petroleum USTs to ensure that they are financially able to pay for any releases that occur. The regulations in 40 CFR Part 280 also included provisions for responding to suspected and confirmed releases from leaking underground storage tanks (LUSTs) which required investigations and cleanups. In 1988, EPA also promulgated regulations for state program approval (40 CFR Part 281). In 2005, the Energy Policy Act further amended Subtitle I of SWDA. The Energy Policy Act requires states that receive Subtitle I funding from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published cooperative agreement guidelines for states regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems. In 2015 EPA published revisions to the UST regulations in the *Federal Register*. These revisions strengthen the 1988 federal underground storage tank (UST) regulations by increasing emphasis on properly operating and maintaining UST equipment, among other things. The revisions will help prevent and detect UST releases, which are a leading source of groundwater contamination. The revisions also amended the regulations for state program approval in 40 CFR Part 281. This is the first major revision to the federal UST regulations since 1988.

B. Scope

This Memorandum of Agreement (MOA or Agreement), between the EPA and the Virgin Islands Department of Planning and Natural Resources (Territory or VIDPNR), establishes the respective roles and responsibilities of each agency with regard to the implementation of

the federal underground storage tank (UST) program and the leaking underground storage tank (LUST) program. This Agreement becomes effective upon the date of the last signature of the parties hereto and remains in effect unless modified by the mutual consent of both parties, a party withdraws from the Agreement, and/or EPA approves the state program under Section 9004 of SWDA, 42 USC § 6991c.

This Agreement is entered into by the Commissioner of the Virgin Islands Department of Property and Procurement on behalf of the VIDPNR, subject to the approval of the Governor of the Virgin Islands, and the Regional Administrator, EPA Region 2. Any party to this Agreement may withdraw from this Agreement or initiate renegotiation of the Agreement by providing 60 days written notice to the other party.

Nothing in this MOA shall be construed as surrendering existing statutory or regulatory authority of the EPA or the VIDPNR. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under Subtitle I of SWDA. Nothing in this MOA shall be construed to contravene any provisions of 40 CFR parts 280 and 281. This MOA does not impose legally binding requirements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not party to this Agreement, against VIDPNR or EPA, their officials or employees, or any other person. This MOA does not direct or apply to any person outside of VIDPNR and EPA.

C. Purpose

Under the federal UST regulations promulgated in 1988, EPA is identified as the implementing agency in a state until the state has obtained program approval or the state is designated to act on behalf of EPA pursuant to an MOA. This MOA identifies specific activities that VIDPNR and EPA will carry out to implement the federal UST regulations and the LUST program in the U.S. Virgin Islands.

EPA program funding may assist the Territory in implementing certain activities stated in this Agreement. However, nothing in this MOA, in and of itself, obligates EPA to expend appropriations or incur other financial obligations that would be inconsistent with Agency budget priorities. As required by the Antideficiency Act, 31 USC 1341 and 1342, all commitments made by EPA in this MOA are subject to the availability of appropriated funds. All commitments made by VIDPNR in this MOA are subject to the availability of and appropriation of funds.

D. Authority

Sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009, 9010, and 9012 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6991, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(h), 6991(i), and 6991(k). These sections implement the UST/LUST programs, including directing EPA to promulgate requirements for detection, prevention, and correction of underground storage tank releases, and for demonstrating financial

responsibility. Section 9003 also provides a procedure by which the state may carry out corrective action and enforcement activities for states that enter into a cooperative agreement with the EPA. Under Section 9004, a state may submit its UST program for EPA approval.

The Energy Policy Act requires states that receive Resource Conservation and Recovery Act (RCRA) Subtitle I funds from EPA to meet certain requirements. Consequently, between 2006 and 2007, EPA published grant guidelines for states (pursuant to Sections 9002, 9003, 9005, 9010, and 9012) regarding operator training, inspections, delivery prohibition, secondary containment, financial responsibility for manufacturers and installers, public record and state compliance reports on government UST systems.

E. Information Sharing

1. EPA will keep VIDPNR informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the federal UST or LUST programs. EPA will also provide general technical guidance to VIDPNR. EPA will share with VIDPNR any national UST or LUST program reports developed by EPA. EPA will make available to VIDPNR other relevant information, as requested, that VIDPNR needs to implement the federal program.

2. VIDPNR agrees to inform the EPA of any proposed or adopted territorial program changes that would affect the Territory's ability to help implement parts of the federal UST or LUST programs. Territorial program changes of concern include modification of the Territory's legal authorities (for example, statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (for example, available or budgeted personnel and funds). VIDPNR will provide compliance monitoring and enforcement information to the Regional Administrator or designee. VIDPNR agrees to provide EPA, at its request, with copies of reports resulting from any compliance inspection and subsequent enforcement actions.

3. National Data. EPA maintains certain national data on underground storage tanks. These data are used to report to the President, the Congress, and the public on the achievements of the underground storage tank program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information that involves the UST or LUST programs in the U.S. Virgin Islands, EPA will generally first seek to obtain this information from VIDPNR (there may be times when, to build an enforcement case against an owner or operator of USTs for violations of the federal regulations, EPA will use its statutory information request authorities to request the information). VIDPNR agrees to provide the Regional Administrator or delegate with this information if readily available and as resources allow. If VIDPNR is unable to provide the underground storage tank information or if it is necessary to supplement the territorial information, EPA will engage in an alternate means of information

collection after notifying VIDPNR. EPA will share with VIDPNR any national reports developed by EPA as a result of such information collection.

4. Confidentiality. VIDPNR will make available to EPA upon request any information obtained or used in VIDPNR's administration of the federal UST and LUST programs without restriction unless the transfer of information is precluded by Territorial law. If the UST owner/operator has submitted the information to VIDPNR under a claim of business confidentiality, VIDPNR will clearly identify that claim of confidentiality to EPA in writing when providing the information. EPA will not disclose, copy, reproduce or otherwise make available to the public any information obtained from VIDPNR that is subject to a claim of confidentiality without the UST owner's/operator's consent, unless otherwise required or allowed by law.

II. IMPLEMENTATION ACTIVITIES

Implementation activities are those tasks that will be conducted by VIDPNR or EPA pursuant to this MOA to implement the federal UST and LUST programs. The specific activities assumed by VIDPNR will be determined by territorial priorities and resources, and the status of the Territory's program development. The specifics of these activities are detailed in the VIDPNR's LUST-Prevention and LUST-Corrective Action cooperative agreements. VIDPNR and EPA agree to assume responsibility for the following activities as specified below.

A. Territory-lead implementation activities

Assumption by the Territory of these activities in no way implies that the Territory's program meets the no less stringent or adequate enforcement requirements of the state program approval process. This determination will be made by EPA in response to the Territory's application for program approval, should the Territory submit one.

1. 40 CFR part 280

   VIDPNR will assume, unless otherwise specified, all responsibilities of the implementing agency as written in 40 CFR part 280.

2. Energy Policy Act of 2005

   VIDPNR will:

   a. Ensure that UST inspectors are adequately trained so that each are able to identify and document violations of the Territory's UST regulations during on-site inspections and review of documents.

b. Conduct inspections of each federally regulated UST system at least once every three years by the anniversary of the previous three-year inspection.

c. Enforce violations of the Territory's promulgated UST Regulations. VIDPNR shall refer all identified violations of federal UST regulations for which it does not have enforcement authority to the Region, which shall appropriately follow up, at its discretion.

d. Meet the requirements as laid out in EPA grant guidelines issued pursuant to the Energy Policy Act of 2005, including guidelines on UST inspections, secondary containment, operator training, public record and delivery prohibition.

e. VIDPNR will strive to ensure that:

(1) All releases from UST systems are promptly reported and assessed, and further releases are stopped;

(2) Actions are taken to identify, contain and mitigate any immediate health and safety threats that are posed by a release (such activities include investigation and initiation of free product removal, if present);

(3) All releases from UST systems are investigated to determine if there are impacts on soil and groundwater, and any nearby surface waters. The extent of soil and groundwater contamination must be delineated when a potential threat to human health and the environment exists.

(4) All releases from UST systems are cleaned up through soil and groundwater remediation and any other steps are taken, as necessary to protect human health and the environment;

(5) Adequate information is made available to VIDPNR to demonstrate that corrective actions are taken in accordance with the requirements of paragraph (e) of this section. This information must be submitted in a timely manner that demonstrates the corrective action's technical adequacy to protect human health and the environment.

f. In accordance with 40 CFR §280.67, VIDPNR must notify the affected public of all confirmed releases requiring a plan for soil and groundwater remediation, and upon request provide or make available information to inform the interested public of the nature of the release and the corrective measures planned or taken.

B. EPA-lead implementation activities

Unless otherwise stated, EPA-lead implementation activities described in this MOA will be initiated by EPA Region 2.

1. EPA will establish policy for handling variances allowed in 40 CFR Part 280.

2. Enforcement

EPA and VIDPNR will communicate and coordinate closely on enforcement, so that each agency will be aware of the other's enforcement activities. Generally, EPA will defer to VIDPNR's enforcement authority when VIDPNR has taken appropriate enforcement action. Prior to conducting UST compliance inspections or initiating enforcement actions within the Territory, EPA will generally notify the VIDPNR at least 7 days prior, verbally or in writing, for the purpose of coordinating federal and territorial actions, except that EPA will not generally provide notice to VIDPNR prior to issuing field citations.

VIDPNR reserves the right to act independently under territorial authority.

EPA reserves the right to act independently in any SWDA Subtitle I implementation and enforcement activity in the Territory. EPA will undertake enforcement actions as it deems appropriate. These actions may occur as consequences of planned activities (e.g., monitoring compliance with existing system leak detection phase-ins) or random inspections (e.g., site visits).

III. EPA OVERSIGHT

EPA oversight of the VIDPNR's UST and LUST programs shall consist of the following elements:

A. Review of cooperative agreement applications and workplans contained therein;

B. Review of semi-annual reports of the Territory's UST and LUST programs to be submitted to EPA by the VIDPNR;

C. Review and evaluation of VIDPNR's UST enforcement and LUST remedial action policies;

D. Review of other submittals required by UST or LUST cooperative agreement workplans;

E. At least one annual on-site meeting to discuss performance under the open cooperative agreements and this MOA.

IV. VIDPNR – U.S. EPA UST/LUST Memorandum of Agreement (MOA)

SIGNATURES

This MOA becomes effective upon execution of the signatures below.

Peter D. Lopez — 9/3/19
Peter D. Lopez — Date
Regional Administrator
U.S. Environmental Protection Agency
Region 2

16 Aug 2019
Jean-Pierre L. Oriol — Date
Commissioner
Virgin Islands Department of Planning and Natural Resources

8/28/19
Anthony D. Thomas — Date
Commissioner
Virgin Islands Department of Property and Procurement

APPROVED:

9/26/19
Honorable Albert Bryan Jr. — Date
Governor
Virgin Islands Department of Planning and Natural Resources

APPROVED AS TO LEGAL SUFFICIENCY
Virgin Islands Department of Justice by:

Carol G. McDonald, Esq. AAG — 9/19/19
Date

CERTIFICATE OF APPROVAL

I hereby certify that this is a true and exact copy of MOU No. _____ entered into between the Virgin Islands Department of Planning and Natural Resources and the Department of Property and Procurement, and the United States Environmental Protection Agency.

Anthony D. Thomas
Commissioner
Virgin Islands Department of Property and Procurement

G009PNRT19

MEMORANDUM OF AGREEMENT

between

the State of Wyoming and the United States Environmental Protection Agency

regarding

Self-Audits Conducted Pursuant to State Law

I. PREAMBLE

This Memorandum of Agreement (MOA) is entered into by the State of Wyoming and the United States Environmental Protection Agency (EPA) - Region VIII (collectively, the parties), to establish procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (self-audit law). The parties agree to encourage greater compliance with laws and rules protecting public health and the environment by promoting a greater degree of self-policing in the regulated community. This Agreement is a companion document to be read in conjunction with the Wyoming Attorney General's letter opinion of July 10, 1997, for implementation of the self-audit law.

II. BACKGROUND: WYOMING STATE AUDIT PROGRAM

Wyoming's audit law provides incentives to regulated entities to self-disclose noncompliance with environmental requirements found through environmental audits. Wyo. Stat. Ann. §§ 35-11-1105 and 35-11-1106 (2017). The EPA's Audit Policy also provides incentives for self-disclosure of noncompliance. 65 Fed. Reg. 19,618 (Apr. 11, 2000). Generally, neither policy applies if the self-disclosure occurs after a facility is already under investigation for violations of the applicable environmental law.

According to the Wyoming Attorney General's letter opinion of July 10, 1997, regarding Wyoming's audit law, WDEQ retains the authority to obtain penalties and injunctive relief for violations of federally delegated programs. Specifically, that opinion states that "WDEQ retains all the authority it had prior to the passage of the audit privilege and immunity law to recover civil penalties for violations that result in significant economic benefit or that result in serious harm or present an imminent and substantial endangerment to public health or the environment under federally-delegated programs."

Wyoming's self-audit law meets minimum requirements for Federal delegation.

III. APPLICABILITY

Except for the Wyoming Attorney General's letter opinion of July 10, 1997, this document supersedes any prior agreements between EPA and Wyoming regarding implementation of the Wyoming self-audit law, and supersedes EPA penalty policies that would otherwise apply to civil

violations of Federal environmental statutes that Wyoming is authorized to administer where such violations are addressed under Wyoming's self-audit law.

This agreement does not apply to EPA's authorities to investigate and prosecute criminal violations.

IV. AGREEMENT

In no case shall EPA selectively target or investigate Wyoming entities solely on the basis that they have sought penalty immunity under Wyoming's self-audit Law.

In any case in which an entity conducts an audit under the Wyoming Audit Law EPA will not request an environmental audit report to initiate a civil investigation of the entity or the facilities that were the subject of the audit.

Nothing in this memorandum of agreement affects EPA's authority to obtain information from sources other than an audit report. Nor does this agreement preclude EPA's use of such independently obtained information, even if it also is included in an audit report.

EPA will closely communicate with upper management of WDEQ prior to conducting inspections or using EPA information gathering authorities to evaluate the compliance of Wyoming facilities with federal laws that Wyoming is authorized to implement. If, during such communication, EPA identifies a facility as being of interest to EPA, and such facility has participated in Wyoming's self-audit program, Wyoming shall notify EPA of that fact. Any dispute over whether EPA should undertake inspections or information gathering at a facility that participated in Wyoming's self-audit program shall be elevated to the Regional Administrator and the Director and, if necessary, the OECA Assistant Administrator.

If EPA determines that a facility that participated in Wyoming's self-audit program has violations of federal environmental statutes that Wyoming is authorized to implement that were not disclosed or were disclosed but have not been corrected or are not subject to an enforceable order requiring correction under Wyoming Statute § 35-11-1106 (2017), EPA may take an enforcement action after closely communicating with upper level management of WDEQ. In a circumstance where upper management in the Region and Wyoming do not agree on a matter, the matter shall be elevated first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator, for a decision.

In general, EPA defers to state penalty mitigation for self-disclosures as long as state policy meets minimum requirements for Federal delegation. *See* 65 Fed. Reg. 19,624. In general, Wyoming's self-audit law waives penalties for violations that are self-disclosed. However, as stated in Wyoming Statute § 35-11-1106 (2017) and in the Wyoming Attorney General's letter opinion of July 10, 1997, Wyoming retains penalty authority for specific circumstances. EPA will defer to Wyoming's judgment on the assessment of penalties under its self-audit law except as described in this paragraph. EPA may consider asking Wyoming to seek penalties under its retained authorities where Wyoming's pattern and practice of penalty mitigation results in implementation of a federally delegated program that is less stringent than the federal program (see Wyo. Stat. Ann. § 35-11-1106(a)(iv)). If Wyoming rejects such a request, EPA retains authority to take direct action under its own authorities. However, prior to taking such an action, EPA will communicate closely with upper management of WDEQ and, if needed, will elevate any disagreements first to the Regional Administrator and the Director and, if necessary, to the OECA Assistant Administrator.

Nothing in this memorandum of agreement affects EPA's authority to seek injunctive relief to correct ongoing violations of federal law which are not already being addressed by Wyoming or to address an imminent and substantial endangerment.

Wyoming will develop a methodology to measure any increased participation in and compliance benefits from Wyoming's self-audit program.

V. AGREEMENT MODIFICATION

This Agreement may be modified by the Parties to ensure consistency with state programs and federal requirements for program delegation. Any revisions or modifications to this Agreement must be in writing and signed by all Parties in order to become effective. In the event the Wyoming self-audit law is amended EPA and Wyoming will confer and make any revisions necessary to this MOA.

VI. GENERAL PROVISIONS

This Agreement does not create any substantive or procedural right, duty, obligation or benefit, implied or otherwise, enforceable by law or in equity, by persons who are not party to this agreement, against Wyoming or EPA, their officers or employees, or any other person. This Agreement does not direct or apply to any person outside of the State of Wyoming and EPA.

VII. TERMINATION

This Agreement may be terminated at any time by either Party after notice in writing is provided to the counterparty 60 days before the desired termination date. In the event the Agreement is terminated, EPA intends to continue to honor the terms of this MOA for those reporting entities that had final action taken by Wyoming prior to the termination date.

VIII. SIGNATORIES

10.26.18

Douglas H. Benevento Date
Regional Administrator
U.S. Environmental Protection Agency
Region 8

10/26/18

Todd Parfitt Date
Director
Wyoming Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 25 2018

Todd Parfitt
Director
Wyoming Department of Environmental Quality
200 West 17th Street
Cheyenne, Wyoming 82002

Dear Director Parfitt:

Please find attached the "Memorandum of Agreement Between the State of Wyoming and The United States Environmental Protection Agency Regarding Self-Audits Conducted Pursuant to State Law" that is ready to be executed. The Memorandum of Agreement (MOA) establishes procedures and policies for administration of the Wyoming Audit Privilege and Immunity Law (Self-Audit Law) and reflects our agreement to encourage greater compliance with laws and rules protecting public health and the environment by promoting greater self-policing in the regulated community.

The EPA values its partnership with Wyoming on environmental issues and is committed to providing Wyoming with the support and flexibility needed to effectively implement its Self-Audit Law.

We are grateful for the hard work and cooperation of Wyoming Department of Environmental Quality (WDEQ) officials and the EPA that led to the development of this MOA, and we look forward to working with WDEQ on implementing this MOA and in other efforts to ensure the health and safety of the people and environment of Wyoming. Please contact us if you have any questions, concerns, or ideas for further cooperation.

Sincerely,

Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

Doug Benevento
Regional Administrator
EPA Region VIII

Attachment